

NATIONAL ASSOCIATION OF STATE JUDICIAL EDUCATORS

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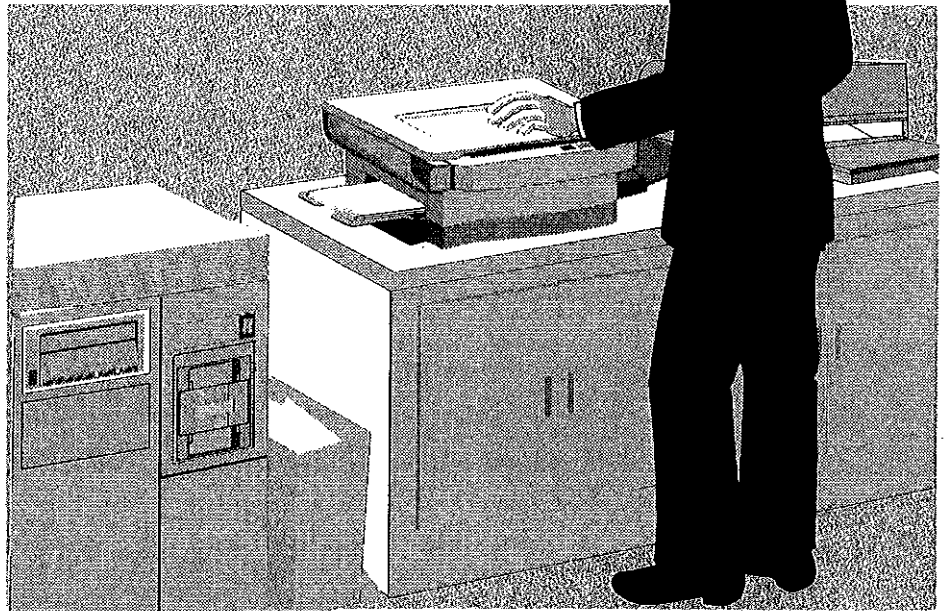
Fall 1994

Copy Right!

Blan L. Teagle

Imagine that you are four weeks out from a program. The materials deadline has passed; your printing deadline looms; and a hotshot trial lawyer, the alleged renowned expert on the rules of evidence, whom your judges want to hear at every conference, has hastily thrown together (or had a secretary photocopy) and submitted two hundred pages of materials consisting of two law review articles, an annotated evidence coda, and an article from *The Judges' Journal*.

You open the Fed Ex package and notice that the judge has once again opted for volume over value [see sample syllabus guidelines in this issue]; you also notice those pesky copyright symbols in each and every item the evidence expert submitted. It turns out, he's no expert on copyright law. Perhaps, neither are you. After all, lawyers can make their entire careers navigating the murky waters of intellectual property law and earn a comfortable living at it. Why should you have to wind your way through the morass on a judicial educator's salary? Unfortunately, however, you might have to learn some basics to protect yourself and your office from copyright infringement liability. Copyright law is difficult, but it is possible to break copyright basics into some manageable chunks of information to avoid the obvious copyright infringement problems a



judicial educator would most likely encounter.

This article will discuss written materials, and will exclude audio, video, or CD-ROM. A discussion of copyright registration has been omitted because most judicial educators will not be involved in registration and will not be checking to make sure an author is registered. The article defines owner, discusses the importance of a notice of copyright, and tries to dispel some dangerous myths about the "Fair Use Doctrine," a grossly exaggerated exception to the law against using copyrighted material without permission. Viewed by some educational institutions as an aegis against copyright liability in an academic setting, if improperly understood the doctrine can actually prove to be a

siren luring the badly moored judicial educator into the rocks. Finally, this article will recommend a procedure for safely securing permission to reprint. First, the basics.

Owner

The owner of a work has exclusive rights over its use. This is important because the owner isn't necessarily the author or creator of the work. The owner might be that author of a law review article, but it's not very likely. Copyright usually belongs to the journal in which the article is published or to the publisher who produced it.

To further complicate matters, rights can be transferred and are divisible. They can be assigned

continued on page eight

Blan Teagle is a staff attorney for the Legal Affairs and Education Division of the Florida Office of the State Courts Administrator.

**PRESIDENT'S
COLUMN**

Larry Stone



It does not seem possible, but by the time this is printed, I will have been NASJE's president for two years. Those two years have been extremely pleasurable, thanks chiefly to the cooperation and active participation of the board of directors, NASJE committee chairs, members of the committees, and NASJE members in general. Thanks to many contributions by many people, our organization has continued to grow during my tenure, both in size and in stature.

When I assumed the presidency in 1992, I identified four goals I hoped to accomplish during my term. I am pleased to report that, at least to some extent, we have made significant progress on three of them.

Improvement of Relationships between NASJE and Other Organizations.

Significant progress has been made in this regard with a number of organizations:

The Conference of Chief Justices (CCJ) endorsed NASJE's Principles and Standards of Continuing Judicial Education, and the association has offered to assist CCJ in planning the educational portion of its meetings.

Thanks to the assistance of Ingo Kellitz, of the National Center for State Courts' Insti-

continued on page ten

Why Do Annual Reports?

Richard Reaves

Narrative segments in modern annual reports afford CJE programs the opportunity for special valuative comment on one-time activities or some new emphasis in product development or delivery methods.

Are you: Desirous of a compact public relations piece that reveals the story of your program's efforts? Tired of sifting through dusty file drawers to locate minutes from past policy board meetings? Needing a quick reference resource for zeroing in on the identity of a distantly remembered faculty member? Interested in showing a professional disciplinary agency or a special interest group that its passion has not gone untreated by your state's judicial education programming? Hoping to attain some threshold of closure in the never-ending onslaught of education design and delivery chores?

Then . . . do an annual report on your CJE operations! It furnishes an easy answer to all these questions, as well as many others. A growing number of state CJE programs are publishing such yearly accounts.

Some of these state CJE operations have never stepped back from the yearly reporting routines formerly required to maintain LEAA financial support. With the demise of such federal funding, however, the annual report facilitated such other salutary purposes as interagency relations and public information, recordkeeping or policymaking history, quick reference to a course sponsor's training topics and speaker resources, and development of a regularly proportioned life cycle in the operations and objectives of an organization.

In recent years, productivity measures have begun enriching annual reports. Course planning sessions, participant head counts, program support days, conference and seminar execution tallies, numbers of new publications: all these numerical data reveal something about the productivity of a CJE organization, especially when one year's report can be compared to those from prior years. The attendee class hour, as used for many years at the Ohio Judicial College, represents one of the best annual productivity measures available, by combining a program's attendee head count with the instructional hours offered. Yearly consistency in the data gathered and analyzed is essential to attaining any productivity measurements that merit serving as guideposts to future action.

Narrative segments in modern annual reports afford CJE programs the opportunity for special valuative comment on one-time activities or some new emphasis in product development or delivery methods. Important philosophical perspectives on the provider organization's aspirations and values often can be gleaned from these materials.

Financial information regarding CJE efforts seems to be handled primarily in accord with two philosophies. Some annual report writers believe that any reflection of financial health will be detrimental

continued on page five

Guidelines for Judicial Program Written Materials

The program syllabus materials serve as important references during the courses and when student judges return to their courts. The goal is to generate a syllabus containing a small amount of materials that will be functionally useful on the bench. The following specific guidelines apply to your preparation; materials that do not conform will be deleted.

1. **Include only the most important materials for the student judges.**
 - The most valuable items are step-by-step, "how to do it," procedural checklists and scripts (or spoken forms).
 - The next most important items are brief outlines of the subject matter and citations to prominent cases or statutes.
 - Prepare a brief bibliography of published references for your course topics, emphasizing materials particularly useful to judges.
2. **Do not include the following materials; they will be removed before copying:**
 - Copies of cases and statutes (give cites and brief summaries).
 - Law review articles (give cites and brief summary of topic).
 - Copies of available published materials (other than checklists actually used in class) or other materials readily accessible to judges. Just give the appropriate citations.
3. **Other syllabus "dos":**
 - Minimize in-class handouts because of the disruption they create. Ask us to color-code handouts, such as hypotheticals, to distinguish them from materials that student judges should save for later reference.
 - Review outlines of other courses in the program to avoid duplication of coverage in written materials (or class presentations). Call faculty for other courses if in doubt.
 - Adhere to syllabus deadlines below; submit clean copy (or disk) for clear, readable photocopies.

Syllabus Deadlines

- [Date (6-8 weeks before program)]: Mail copy of materials to judge who serves as course liaison (and to us if typing, cut-and-paste, etc., are needed).
- [Date (4-6 weeks before program)]: Submit final materials to us. Materials received after this date (and by [next date below]) will be duplicated and distributed as handouts and not included in the syllabus.
- [Date (2-3 weeks before program)]: Submit handouts or any remaining materials to us. After this date, faculty must duplicate and bring to class an adequate number of copies for participants (reimbursement with receipt is limited to \$20). ■

Marketing Your Audio and Video Tapes

Gavin Lane

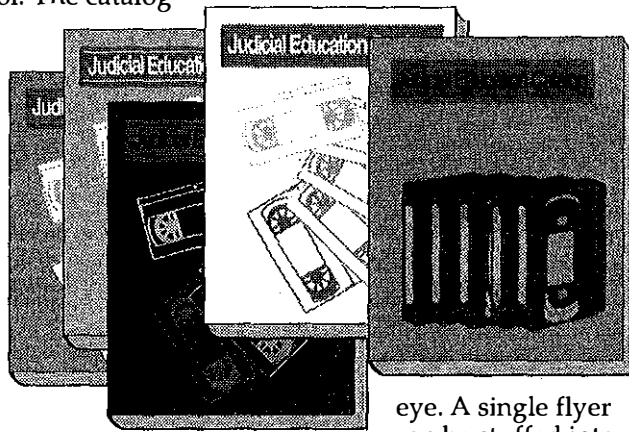
Many state judicial education organizations produce their own video- and audiotapes, and those that do not are repositories for tapes from SJI and other sources. By targeting hot topics and preserving live presentations, tapes can provide timely information for judges and court staff. Publicizing these resources effectively, however, is essential to their value as educational tools.

Of course, the most important marketing tool is ensuring that you have a good product by producing tapes with clear objectives and a definite audience in mind. That assumed, whether the tapes are marketed for sale or for loan, there are a number of proven methods for marketing them. Different methods are useful for different types of tapes.

The Catalog. An annual or semiannual catalog of all tapes is a standard marketing tool. The catalog should be indexed by subject, but can be organized by the field of law (criminal, civil, probate) or by functional area (orientation, updates, hot topics). Some combination of both is probably best. Clear instructions about how to borrow or buy are important, and a well-designed order form that can be photocopied or pulled from the catalog will make it easy to order the

tapes. Each tape program should have a discrete reference number, a description of the program content, and the recording date. The strength of a catalog is its comprehensive compilation of resources. Its weakness is its annual or semiannual nature, which may relegate it to the bottom of the pile on a judicial educator's desk. Also, tapes recorded between catalogs may be of limited use by the time they are publicized.

Direct Mail Flyers. These are best used for publicizing particular tapes on subject areas (settlements, domestic violence) or new or time-sensitive tapes (hot topics from a workshop). Desktop publishing software and sophisticated word-processing packages have made the creation of attractive flyers a snap. Clip art packages offer ways to include interesting images, and colored paper also helps catch the



eye. A single flyer can be stuffed into any direct mailing or sent alone, and it can also become its own order form when it is folded three ways and mailed like a letter. Try putting an attractive tape description on one side of the flyer and using the three folds on the other side for the



following data: the return address to your organization complete with a place to affix the stamp, the requester's name and address, and clear instructions on how and where to buy or borrow the tapes. All of the tapes from a workshop can be publicized with a single flyer that allows users to quickly check the boxes for the tapes they want and return the flyer in the mail.

Direct Mailing of Tapes. It is hard to gauge the needs of people who are not requesting a tape (and a waste of money to send tapes no one will watch), so unsolicited mailing of tapes should probably be used only when there is a demonstrated need for the information being provided. An example would be practical tapes for new judges who are seeking a broad understanding of their new roles and responsibilities. Introducing tapes as useful educational tools early in judges' careers may also ensure that tapes will come to mind whenever new challenges arise.

Demonstration and Display. Show off your tapes. Take some copies to conferences and display them with the latest catalog near the

Gavin Lane serves as audio/video manager at the California Center for Judicial Education and Research (CJER).

registration area. If possible, have an interesting tape playing nearby. Also, use of videotapes by faculty can demonstrate their substantive value; encourage teachers to use them.

Tapes can provide timely and practical resources that your judges

will thank you for over and over. Let them know what you've got!

We thank Larry Stone, of the Ohio Judicial College, and Dennis Catlin, of the Michigan Judicial Institute, for their suggestions. If your state has innovative ways of marketing your tapes, write and let us know! ■

Lending Library Tips

If you publicize your tapes regularly, you will receive a regular stream of orders. Organizing a mail order lending library system early on will minimize the amount of work required to support tape lending.

1. Keep clear records of the tapes available in the library, and of the destination of each tape that is loaned, given away, or sold. For borrowed tapes, include the date returned as well as the date loaned. Using a relational database software program such as Borland's Paradox or Microsoft's Fox Pro, in less than a day you can build a system for keeping track of tapes. These programs are "user friendly" and easy to learn. These same database programs can generate mailing labels and form letters for requesting return of overdue tapes.
2. Give every master tape a program number (the same number appearing in the catalog). If you make copies for lending, every duplicate tape should include that program number as well as its own copy number. Keep your master tapes separate from the tapes available for lending. Shelf them separately if possible.
3. Assign the same program number to any written materials that accompany the tapes and file the materials by program number.
4. Mail your tapes in padded envelopes. For borrowed tapes, include an additional mailer with return address and a form letter with instructions on how and when to return the tape. Wrapping the return mailer around the tapes also helps protect them.
5. Set aside some designated time each week for mailing new requests, logging returned tapes in the database, and returning those tapes to their shelves. ■

Annual Reports, continued

to gaining greater resources in the future. Little or no dollar data is included in these persons' reports. Others believe that expenditure information can be used for commenting upon productivity. A CJE program's dollar investment per participant class hour can be calculated annually and used as a measure from one year to the next. This may well be the most workable measure for comparing CJE programs across state lines.

Programmatic goals can also be formulated each year, and their attainment critiqued in the annual report. Over a series of years, this goal evaluation effort can be used to show organizational progress. Along with the yearly varying financial data, a goal statement and commentary section of an annual report helps define and strengthen the life cycle of a CJE service provider. Both program staff and policymakers benefit from this annually recurring contact with the reality touchstones or organizational goals.

The following state CJE programs have published annual reports that might serve as guides for organizations desiring to begin this activity: the ICJE of Georgia, the Ohio Judicial College, the Utah AOC, and the Texas Justice Courts Training Center.

Explore the benefits of producing an annual report. When you do, you'll find that it's far more than a burdensome year-end requirement. ■

A Cultural Diversity Reading List*

Hon. Peggy F. Hora

*This list is not meant to be an exhaustive bibliography, but rather a compilation of some interesting books I've read over the past few years.

Allende, Isabel, *House of Spirits*
(Chilean woman's perspective in the Central and South American tradition of mystical literature)

Alvarez, Julia, *How the Garcia Girls Lost Their Accent* (Cuban immigrants growing up in the U.S.)

Brown, Rita Mae, *Rubyfruit Jungle*
(Lesbian coming-of-age story and funny as anything)

Brownmiller, Susan, *Against Our Will: Men, Women, and Rape*
(excellent rape victim's perspective)

Chang, Jung, *Wild Swans* (three generations of Chinese women: grandmother, one of the last concubines; mother, early Mao follower; daughter, Communist youth now living in U.S.)

Chatwin, Bruce, *Song Lines*
(Aborigine's oral history traditions)

Cooper, J. California, *Family*
(fictional female slave narrative)

Craven, Margaret, *I Heard the Owl Call My Name* (Native American death myth)

Dorris, Michael, *A Yellow Raft in Blue Water* (Native American girls' coming of age)

Faludi, Susan, *Backlash* (a historical look at the last twenty years of the women's movement, feminism)



Hayslip, Le Ly, *Child of War, Woman of Peace* (Vietnamese woman's coming-of-age story and immigration of U.S.; basis of Oliver Stone's *Heaven and Earth*)

Hillerman, Tony, *numerous titles* (mysteries with Navajo culture and Navajo policeman protagonist)

Hulme, Keri, *The Bone People* (Maori coming-of-age story)

Isherwood, Christopher, *A Single Man* (gay man's autobiography)

Kadohata, Cynthia, *Floating World* (Japanese-American woman's perspective)

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Kincaid, Jamaica, *Island Home* (Caribbean woman's perspective)

Kingston, Maxine Hong, *China Men* (perspective of Chinese men)

Llosa, Mario, *The Storyteller* (Central American mystical fiction)

Lord, Betty Bao, *Legacies* and *Spring Moon* (Chinese woman's perspective)

Mathabane, Mark, *Kaffir Boy* (South African boy's coming of age in Soweto)

Matthiessen, Peter, *In the Spirit of Crazy Horse* (Native American history)

McMillan, Terry, *Mama, Disappearing Acts*, and *Waiting to Exhale* (African American woman's perspective)

Miller, Isabel, *Patience and Sarah* (two women grow to love each other as they cross the Oregon Trail)

Monette, Paul, *Borrowed Time* (Hollywood writer's journal of his lover's death from AIDS), *Becoming a Man* (autobiography)

Morrison, Toni, *Beloved*, *Song of Solomon*, *Tar Baby*, *Jazz*, and *The Bluest Eye* (my favorite African American woman writer)

Naylor, Gloria, *Mama Day*, *Women of Brewster Place*, and *Bailey's Cafe* (African American woman's perspective)

Reid, John, *The Best Little Boy in the World* (gay male coming-of-age story)

Shilts, Randy, *And the Band Played On* (history of AIDS crisis)

Sinclair, April, *Coffee Will Make You Black* (growing up in Chicago in the mid-1960s)

Tannen, Deborah, *You Just Don't Understand* (different ways that men and women communicate)

Thornton, Lawrence, *Imagining Argentina* ("the disappeared" in Argentina), *Ghost Woman* (the "civilizing" of the Santa Barbara Indians)

Uchida, Yoshiko, *Picture Bride* (Japanese woman's arranged marriage)

Villasenor, Victor, *Rain of Gold* (Mexican-American Roots)

West, Cornel, *Race Matters* (African-American Princeton University professor's essays on race)

Wright, Bruce, *Black Robes, White Justice* (why our justice system doesn't work for blacks) ■

Distance Education and the NASJE News

A recent JERITT questionnaire included the question "What technologies did you use for distance education in any of your programs offered during last year? Inasmuch as the *NASJE News* itself is a vehicle of distance education for judicial educators, we call your attention to previous articles or references in *NASJE News* related to types of distance education.

Distance Education Technology	NASJE News
Print Correspondence (Bench Guide)	Vol. 8, No. 2, p. 8
Self-instruction Using Video Material	Vol. 4, No. 1, p. 9 Vol. 3, No. 1, p. 11 Vol. 3, No. 2, p. 6 Vol. 3, No. 3, p. 9
One-way Video with Two-way Audio Real Time	Vol. 3, No. 3, p. 9
Real-time Video Using Satellite or Optical Cable	Vol. 3, No. 3, p. 9
Computer-assisted Instruction	Vol. 4, No. 2, p. 1
Interactive Computer Training with Video	Vol. 3, No. 3, p. 9 Vol. 4, No. 2, p. 1

Copy Right, *continued*

jointly or separately, so copyright holders and authors can do whatever they want by contract. They may both own the copyright or one may have a limited use right while the other holds the copyright. So if you were the judicial educator in the opening hypothetical, what are you to do short of refusing to print the evidence guru's materials? Even if the expert wrote the articles, you are the potential "innocent infringer."

Surely, someone has to give you notice of copyright so you know whom to ask for permission to reprint. Well, yes, they do, but read on, because nothing about copyright law is completely straightforward.

Notice

Owners have the burden of giving notice if they want their rights protected and the best method is the statutory notice that comprises three elements:

1. The symbol (©"copyright," or "copr"),
2. Year of first publication, and
3. Name of copyright owner.

If these three elements are included, then you are fairly forewarned that you can't reprint this document without permission. But what if the notice is missing?

Effect of Omission. If the copyright holder forgets to include the statutory notice, does the work pass into the public domain? No. Until a few years ago one could safely say that if a copyright holder forgot to add the statutory notice on the document, the innocent infringer incurred no liability for either actual or statutory damages. Unfortunately, that is no longer the law. Before March 1, 1989, once publication occurred, it was crucial that a copyright notice showing the year and the owner appear on the published work. If this notice was missing, the work was considered to have fallen into the public domain (absent one of the no longer relevant saving provisions of the 1976 Copyright Act). Therefore, an author who published a work under the 1976 act ran a risk of losing copy-

rights in that work unless the work included the proper copyright notice. The notice provisions of the old copyright law are now voluntary although highly encouraged. Where does this leave the innocent infringer? It is still safe to say that innocent infringers are allowed to rely on the absence of copyright notice to escape actual or statutory damages for which they might otherwise be liable under the copyright act. The difference now appears to be that the work does not pass into the public domain and cannot necessarily be used permanently or indefinitely by the innocent infringer. While it is possible to save the copyright in work from which the notice has been omitted, it is not possible to save all of the remedies that would have been available to the owner for an infringement that occurred before the 1989 change. Even though the 1976 act, as amended, makes notice voluntary rather than mandatory, it is obviously still encouraged under the amended act because the innocent infringement defense is not available when notice has ultimately been given. Therefore, once the educator receives notice that the copyright was omitted, he or she has a responsibility to cease making or using copies without permission.

If the notice is on the document, but one of the elements, say the date, is missing, is the educator home free? No. The copyright holder is supposed to do it right, but defective notice may still be good enough to make you look like a copyright infringer.

Length of Copyright

Copyright lasts through the life of the author plus 50 years. The work of a corporate author is protected for 75 years after the date of first publication or 100 years after the date of creation, whichever expires first. The bottom line is that the copyright on most works a judicial educator would be interested in using lasts a very long time, and rarely will the educator receive a packet of materials that, because of longevity, have passed into the public domain.

Fair Use Doctrine

The question often arises: are there exceptions to the need to obtain permission to reprint from the copyright holder? There are quite a few exceptions, the complexity and extent of which are far beyond the scope of this article. The important exception from the judicial educator's perspective is the Fair Use Doctrine. The Fair Use Doctrine has been referred to as a "safety valve" that balances the interests of authors or creators of works in having a limited monopoly on their creations and the needs of the people to have access to a free flow of ideas.

Copyright law in the United States has always contemplated limits on the owner's rights. The Fair Use Doctrine is a judicially created exception derived from general patent language in the U.S. Constitution and formally incorporated into the 1976 Copyright Act. In drafting the act, Congress perpetuated the Fair Use Doctrine out of a concern for educational and scholarly use of information. Although the Fair Use Doctrine applies to a variety of situations, the educational setting has always been its focus. The legislative history makes clear, however, that Congress was unwilling to free educational copying entirely from copyright control. Therefore, over a course of time, some fair use factors have evolved. There are four fair use factors to consider before deciding whether the doctrine will protect an educational entity:

1. Purpose and character of the use, including whether the use is for commercial or for nonprofit educational purposes;
2. Nature of the copyright work;
3. Amount and substantiality of the portion used in relation to the work as a whole; and
4. Effect of use on the value of or potential market for the work.

The fair use concept (though statutorily recognized) is not defined by statute. These four criteria simply become a useful gauge in balancing equities between the copyright

holder and, in our scenario, the judicial educator who wants to reprint a work. The real fair use analysis is contained in guidelines promulgated by an ad hoc committee of educational institutions and organizations on copyright law revision, the Authors League of America, and the Association of American Publishers. These guidelines became part of the House Report accompanying the 1976 act and were adopted in the conference report. Therefore, these guidelines are not the law; they are always used to interpret the law and to help make sense out of the four factors enumerated above.

Fair Use Analysis

What follows is the most critical portion of this article and the part that you can use as a three-step checklist before deciding whether the fair use analysis will entitle you to reprint without permission. These factors are:

Brevity. Brevity means (a) a complete article of less than 2,500 words or (b) an excerpt from any prose work not more than 1,000 words or 10 percent of a work, whichever is less, but a minimum of 500 words.

Spontaneity. For your decision to publish without permission, spontaneity means that the decision to use was at the instance and inspiration of the instructor and the decision at the moment of use were so close in time that it was unreasonable to expect a timely reply from the copyright owner.

Cumulative effect. In assessing the cumulative effect of your copying you must be copying materials for only one course, you must not be using more than one excerpt from the same author, nor more than three from the same collective work, and there must be no more than nine instances of copying during a term or semester.

Obviously, this three-prong test of brevity, spontaneity, and cumulative effect was written with traditional academic institutions in mind.

Hence, the use of the word *term*. Nevertheless, state judicial education entities are involved in the educational and scholarly use of information and therefore are entitled to employ the Fair Use Doctrine when it will help them. It is important to understand that before you can use a work you must determine that it is brief, that the instructor's decision to use it was genuinely spontaneous and close in time to the actual moment of use in your program, and that the cumulative effect of the use will not be great. The above fair use analysis can help you with that exercise.

What the Fair Use Doctrine does not mean is that anybody who wants to use any published work for a nonprofit educational one-time purpose can do so with impunity. Unfortunately, this has been a widely held view among educational institutions when they talk about the Fair Use Doctrine. It is extremely dangerous to assume that because you work for a nonprofit governmental entity and do not charge course participants for your materials that you somehow qualify for immunity from copyright liability. Speaking of immunity, you might wonder, "Doesn't my state have sovereign immunity against suits from private individuals? Why worry me with all this technical compliance stuff?"

State Immunity

What about the status of most state judicial education offices as arms of state government? When the defendant in a copyright infringement action is a state, the plaintiff copyright holder must address the question of state immunity under the Eleventh Amendment to the U.S. Constitution. The Eleventh Amendment affords immunity to the states from suits brought against them in federal court by private parties seeking to impose a liability that must be paid from public funds out of the state treasury. According to a number of treatises on copyright law, there is disagreement among some courts as to whether the Copyright Act of 1976 waives the immunity of states from suits

brought under the 1976 act. It is beyond the scope of this article to engage in a lengthy discussion about the conflict in the case law emerging from the federal courts. Suffice it to say that some courts have refused to recognize a waiver, believing that although Congress may abrogate a state's Eleventh Amendment immunity from suit in federal court, the intention to do so must be clear from the language in the statute. Some courts believe that the language of the copyright act is not so clear. In general interest articles of this nature, widely distributed throughout the states, I believe it is safest to operate under the assumption that a federal court in your jurisdiction could find that your state immunity has been waived. Therefore, in an abundance of caution, it is recommended that you abide by this assumption that the liability and damages provisions of the federal copyright law apply to your office.

Conclusion

When you do obtain copyright permission, get it in writing; verbal approval is not legally binding. The best way to protect your office in copyright matters is to place the burden of securing permission on your presenters, especially nonjudge, paid presenters. Always include a standard paragraph in your confirmation letters mandating that the presenters provide you with written permission from the copyright holder when they submit any materials not original to them.

If you have to request the permission yourself, do so via a standard form letter and request a written response. If you obtain verbal permission over the phone, wait to receive the written confirmation before printing because some publishers change the rules on you between the verbal OK and your actual receipt of the letter. The most common change is the inclusion of a substantial charge or royalty for copying.

And remember, while the Fair Use Doctrine is not a broad license to reprint, it does allow flexibility in reprinting occasional salient excerpts. ■

President's Column, *continued*

tute for Court Management, I was invited to meet with the education committee of the Conference of State Court Administrators last December. We had a very pleasant discussion concerning mutual interests and concerns and our desire to pursue common goals. Much progress has been made in this regard, which should be of benefit to both organizations.

We held the February 1994 midyear meeting of the board of directors in Reno, partly to allow us to meet with representatives of the National Judicial College and the National Council of Juvenile and Family Court Judges. Dean McHardy, Dean Payant, and members of their staffs generously met with us on President's Day. We all shared a considerable amount of information and made a commitment to work together for the overall benefit of judicial education. Both meetings were extremely worthwhile and resulted in plans to hold the 1995 NASJE annual conference in Reno.

Official liaisons representing NASJE now participate on the committee on continuing appellate education of the ABA/Appellate Judges Conference, the ABA/Special Court Judges Conference, and the National Court Reporters Association.

Our relationship with the National Center continues to be a solid one, with NCSC working with us on both *NASJE News* and the Judicial Education Management System (JEMS) project. As previously mentioned, I am in frequent contact with Ingo Keilitz on matters of interest to both organizations.

As you may recall from last year's report, representatives from the National Conference of State Trial Court Judges have met with us on several occasions. Judge John Daffron addressed the attendees of the 1993 annual conference on behalf of the State Justice Institute and NCSTCJ. Denis Hauptly, director of the FJC Judicial Education Division, also addressed us at that meeting, providing an informative overview of the Federal Judicial Center.

Involvement of More Members in Association Business and Activities

The board of directors made—and continues to make—a very conscious effort to involve members in association business. Over the past two years, members were kept informed of and actively participated in the ongoing strategic planning process and the major overhaul of the bylaws. As a result of these efforts, more members have become involved due to changes in voting privileges and the new procedure to solicit those interested in serving as officers or on committees. In addition, the shorter terms of office will greatly increase the opportunity for members to serve on the board of directors.

Continue with the Strategic Planning Process

Begun at the midyear board meeting in 1992 with the assistance of John Hudzik, the strategic planning process has progressed nicely. Again, thanks to hard work by the board of directors and active participation by NASJE members, major revisions have been made in the bylaws, which should result in a better organization. A number of the specific procedures proscribed by the bylaws changes will greatly improve the functioning of the organization. We have come a long way in our strategic planning process and accomplished a great deal in a very short period of time.

Develop Principles and Standards for Judicial Education for Court Support Personnel

Unfortunately, due to the demands of the bylaws revision and related matters, this goal was not realized. It is an area that needs attention, and I hope that it can be addressed in the near future.

All in all, it has been a personally rewarding and enriching tenure. I have learned a lot, made many good friends, and, I hope, contributed to the profession. I would be remiss if I did not express my sincere thanks to the members of the board of directors who worked so hard for the benefit of NASJE. It has indeed been a team effort, and I thank all of you:

V. K.-Wetzel, Karen Waldrop, Kay Boothman, Dan Schenk, Ellen Marshall, Richard Saks, Richard Rosswurm, Paul Biderman, and past president Jerry Beatty. You are a great group to work with.

I also want to express my sincere appreciation to the chairs of two important NASJE committees who are stepping down. Mike Runner, of California, has done a super job of heading the newsletter committee since 1992. The newsletter continues to be a major activity of NASJE, and the committee has been extremely productive under Mike's leadership. Thanks, Mike, for maintaining the high quality of our newsletter. NASJE members also owe a great debt of gratitude to Maureen Conner, of the JERITT project, for her skillful leadership of the education committee. Maureen has chaired this committee since 1988 and has brought the annual conference education program a long way. Before 1991 the conference was completely handled by the appropriate regional director. In 1990 the education committee assumed the responsibility for developing the education program, based on needs expressed by members. Since the 1991 annual conference, the education program has grown into one we can be most proud of. Maureen has been instrumental in guiding the development of the education program and for its presentation each year. Thanks, Maureen, for a truly outstanding job and your commitment to a quality education program for NASJE.

Thanks, too, to Joy Preuss and Jacintha Long of the Ohio Judicial College, who worked on many of the mailings and prepared all of my NASJE correspondence these past two years. I would have been lost without their efficient and capable assistance.

The time has come to "pass the crown" (and the leadership cap) to V. K.-Wetzel, who will assume the presidency on October 11. I leave the office in capable hands, convinced that NASJE and the profession of judicial education will continue to progress and grow under his leadership. ■

Using Focus Groups for Needs Assessment in Judicial Education

Determining the educational needs of the constituencies we serve requires a repertoire of various approaches to needs assessment. As continuing education organizations become increasingly complex and operate in an environment of change, it has become imperative to improve our ability to listen to the people we serve. There is a great value in listening to our constituencies on an ongoing basis in an organized fashion. One increasingly well-regarded and systematic way of listening and gaining information is the **focus group**. A growing number of educators and human services professionals are using focused group interviews, or focus groups, as a method of qualitative research in needs assessment and evaluation. This method can be very effective in continuing judicial education in determining the learning needs of specific groups of judges and court personnel.

What Is a Focus Group?

A focus group is an information gathering technique, a qualitative method, which brings together a group of approximately 7 - 12 people who are usually unfamiliar with each other. The participants are selected on the basis of common characteristics in order to obtain their perceptions, attitudes, and opinions on a topic of interest. Usually, depending on resources, at least three focus groups are conducted with members of the target population on each topic of interest in order to determine recurring themes and issues. In the case of needs assessment, the topic of focus would be perceived educational needs of a particular group of people who either are being served or could be served.

Planning Focus Groups

Planning is critical to the success of focus groups. The first step is to

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determine what they want to know about the target population and how they would use the information. Questions can then be asked during the group interviews in order to ascertain useful information. In addition, it will be important to inform the participants about how the information they share will ultimately be used.

While it is possible to conduct focus groups to assess the needs of your own clients, it is not the preferred approach. In order to minimize bias and provide a neutral group environment where participants can be candid, it is desirable to have an objective moderator and reporter who is not invested in the program or delivery of services. A moderator with focus group experience is desirable, but most educators with experience with small groups and with interviewing skills can manage the task. In addition to conducting the groups, other tasks include: compiling a list of possible participants from the target population; telephoning to recruit participants; scheduling rooms; tape recording sessions; transcribing tapes; analyzing data; and developing a written and/or oral report. The same person can be responsible for all tasks; however, it is advisable that one other person, such as an assistant, be available to serve as a back-up.

The location should be neutral, if possible, in order to minimize participants' tendency to feel they are guests and should provide "polite" responses. In conducting focus groups, the object is to maximize the opportunity for participants to feel comfortable sharing what is on their minds.

It is also advisable to plan an acknowledgment of the time participants contribute in the focus groups. A light snack or dinner is one possible acknowledgment that can be used. The informal time to share food and beverages also contributes to a relaxed atmosphere and can enhance group interaction. It is common in marketing research, which relies heavily upon focus groups, to pay participants. In the

nonprofit sector, complimentary services can act as acknowledgment of the volunteered time as well as an opportunity to promote a new program or service.

It is advantageous to write up a proposal, which includes the intended line of questioning, number of participants, number of groups, sources for names of potential participants, scripts for telephone recruitment and introduction to groups, timeline, and budget. This short written proposal can be shared with the stakeholders in order to get responses. This stage allows further refinement in order to get optimum use of the resources invested in the research project. If at all possible, a pilot focus group should be included in the budget. In the event that a particular line of questioning creates problems, or logistics need to be reconsidered, the subsequent groups can be modified accordingly.

Scripts for telephone recruitment interviews, letters of confirmation, moderator outline or questioning plan and thank you letters can be refined again after the pilot, if necessary. Notetaking during all phases of the pilot will ensure that possible needs for revision can be made.

Conducting Focus Groups

Following any revisions of the pilot, recruitment for the focus groups begins. The importance of this phase of the project should not be underestimated since this is the first contact with the participants. The precise time that the session is expected to begin and end should be specified and maintained. Most focus group interviews are one and one half hours in length with warm-up time added on to that. If at all possible, it is helpful to have the person who is moderating conduct the recruiting as well. That way continuity is assured and the group dynamics are likely to be enhanced.

The moderator and assistant will set up the room in a circle to facilitate group interaction. An introduction is first provided by the moderator. Ground rules for participation

continued on page twelve

Focus Groups, *continued*

are important. People should understand that this is an opportunity for them to have input, to be heard. The object is not to reach a consensus but to cover a diversity of opinions. The purpose of the focus group project, the expectation of how information shared will be communicated to the organization as well as how the organization expects to use the report, and the promise of anonymity should all be included during the introduction. If the sessions will be audio- or video-taped, it is important to explain that the tapes will be transcribed by the moderator or assistant and will not be shared with others, if this is in fact true. If there are any observers, they should be introduced and their reasons for observing specified.

There is always the risk that if people are observed or tapes are to be shared, the participants will give socially desirable responses rather than honest ones.

Once introductions have been made and casual interaction over a light snack or dinner has occurred, the business of interviewing the group begins. This is the most important part, but without good planning and recruiting, useful information gathering cannot occur.

The focus group interview is different than the individual interview. The object is to encourage group interaction in response to general questions posed. Questions will relate to the overall purpose of the needs assessment. They may involve items normally included in

written needs assessments, but they are open-ended and exploratory. Focus groups provide the opportunity to expanded responses, probing follow-up, and group dialogue. They can be excellent means of discussing contemporary issues currently facing the court system. The moderator is the holder of the focus, enforcing ground rules and ensuring that everyone participates and all opinions are heard. The moderator will record both verbal and nonverbal interactions. This data will be used along with the transcribed tapes in developing a final report.

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In applying these guidelines the committee will resolve close issues against giving bylines to committee members and in favor of giving bylines to noncommittee members. When noncommittee members make contributions not otherwise credited, their names will be listed as contributing to that newsletter.

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